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Implementation of the Establishment of Guardianship for the Legal Interests of Children as Substitute Heirs According to the Civil Code

(Study of Decision Number 1063/Pdt.P/2023/PN.Jkt.Sel)

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ABSTRACT

According to Indonesian law, guardianship is defined as the authority to perform legal actions in the interests of minors, whereby the surviving mother can become the guardian of her minor children to obtain inheritance on behalf of their deceased father (substitute heir). The issues raised in this journal are what considerations judges take into account in issuing a decision to appoint a guardian for a minor child according to the Civil Code, and if the child has reached adulthood, whether the district court can revoke the district court's letter of appointment as guardian or automatically expires. This research uses a qualitative normative juridical approach. The results of the research show that judges can accept requests for guardianship from biological parents for their minor children based on the evidence provided by the parents, and guardianship can be revoked in two ways: it can be revoked automatically if the minor child has reached adulthood and can perform legal actions, or by a court order if the guardian has acted in bad faith towards the minor child.

KEYWORDS

Guardianship;
Judge;
Inheritance



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INTRODUCTION

Humans live as bearers of rights and obligations. In general, rights are the logical consequence of an obligation. Rights and obligations are an interrelated series, where every obligation gives rise to a right, or vice versa.¹ The rights and obligations that accompany humans as legal subjects do not always occur simultaneously or are not related. In certain phases, humans have been given rights by law, even though there are no obligations attached to them.² For example, a baby has no legal obligations, but by law, he or she has been given the right to life, the right to be cared for, and the right to inherit. We can find this in Article 1, paragraph (2) of the Civil Code, which states that: "a child in a woman's womb is considered to have been born, if it is in the child's best interests." This statement implies that a baby in the womb is considered a legal subject if it is in the child's best interests, with the consequence that a baby born alive is entitled to certain rights for its benefit, such as the right to inheritance.

Everyone has rights, without exception, but under the law, not everyone is allowed to act independently in exercising those rights. Therefore, it is not excessive for the state to protect minors in legal matters from the actions of legally competent persons that could destroy their future. Various rights regulated in legislation still limit the rights of minors to perform certain legal actions. In the interests of minors so that they can participate in legal proceedings, representatives are needed to represent the actions of minors, such as parents, guardians, or custodians.

Legal protection is "an activity to protect individuals by harmonizing relationships or bonds of values or rules that manifest themselves in actions and attitudes in creating order in human interactions." These words were written by Muchsin,³ meanwhile, Philipus M. Hadjon said that legal protection is protection of human dignity and recognition of the human rights possessed by legal subjects. In terms of legal protection, Philipus M. Hadjon distinguishes between two parts, namely preventive and repressive.⁴ Law and morality are internal and external aspects of human behavior that are subject to morality and law.⁵ The implementation of law requires legal protection for every individual in order to avoid arbitrary actions and achieve justice and legal certainty. Jeremy Bentham and Rudolph von Jhering, in the utilitarian school of thought, argued that lawmakers must create laws that are fair to all members of society as individuals.⁶

Law Number 35 of 2014 concerning Child Protection, in Article 1, paragraph 1 states that: "a child is a person who is under 18 (eighteen) years of age, including children who are still in the womb". This article implicitly states that the state protects minors and unborn children for the sake of their rights and welfare. The

¹ Ana Fauzia & Fathul Hamdani, "Aktualisasi nilai-nilai Pancasila dan konstitusi melalui pelokalan kebijakan Hak Asasi Manusia (HAM) di daerah" (2021) 2:2 J Indones Berdaya 157–166, online: <<https://ukinstitute.org/journals/ib/article/view/2220>>.

² Fathul Hamdani et al, "Fiksi Hukum: Idealita, Realita, dan Problematikanya di Masyarakat" (2023) 1:2 Primagraha Law Rev 71–83, online: <<https://jurnal.upg.ac.id/index.php/primagrahalawreview/article/view/364/373>>.

³ Setiono, *Rule of Law (Supremasi Hukum)* (Surakarta: FH Universitas Sebelas Maret, 2004).

⁴ P M Hadjon, *Perlindungan Hukum Bagi Rakyat Indonesia* (Surabaya: Peradaban, 2007).

⁵ Satjipto Raharjo, *Ilmu Hukum* (Bandung: PT. Citra Aditya Bakti, 2000).

⁶ Ade Maman Suherman & J Satrio, *Penjelasan Hukum tentang Batasan Umur* (Jakarta: Gramedia, 2010).



protection of children aims to guarantee the fulfillment of children's rights so that they can live, grow, develop, and participate optimally in accordance with human dignity, as well as receive protection from violence and discrimination, for the sake of realizing Indonesian children who are of good character and prosperous. Children's rights are part of human rights that must be guaranteed, protected, and fulfilled by parents, families, communities, the state, and the government. As stipulated in Article 28D paragraph (1) of the Constitution of the Republic of Indonesia, "every person shall have the right to recognition, security, protection, and certainty before the law, as well as equal treatment before the law." Based on this provision, legal protection becomes essential in life.

When a child is still a minor for legal purposes and has rights as an heir, their legal interests and rights as an heir can be represented by their parents. For the sake of the interests and protection of minors to obtain inheritance, where one of the parents of the minor has died first, the appointment of a guardian from the surviving parent is very important (Article 345 of the Civil Code). When discussing guardianship, it is closely related to the issue of parental authority in marriage, because children born from a valid marriage of their parents will be under the supervision/authority of their parents. Conversely, if minor children or children who are not yet adults are no longer under the authority of their parents, then in this case, these children are under guardianship.

Guardianship (*voogdij*) comes from the word "*wali*," which means another person acting as a substitute parent who is legally required to represent and supervise a minor (under 18 years of age and unmarried). Thus, guardianship itself means that every parent is a substitute for a minor in performing legal acts. Subekti said that guardianship comes from the word *wali*, which means another person as a substitute parent who is legally required to represent a minor in performing a legal action.⁷ Meanwhile, Wirjono Pradjodikoro said that "Child custody is called guardianship (*voogdij*), while the care of children in the hands of both parents is called parental authority."⁸

Each guardianship, except as stipulated in Article 351 of the Civil Code and Article 361 of the Civil Code, shall have only one guardian, as stipulated in Article 331 of the Civil Code. If one of the parents is deceased, guardianship of the minor child shall be exercised by the surviving parent, unless that parent has been dismissed or released from parental authority (Article 345 of the Civil Code). Each parent who exercises parental authority or guardianship over a child has the right to appoint one or more guardians for the child. If the guardianship is carried out after death, it does not have to be done by the other parent (Article 335 of the Civil Code).

The transfer of guardianship rights over minors in the context of the Civil Code occurs when a father (who usually holds parental authority) dies or has his parental authority revoked, in which case the surviving mother becomes the guardian or, more precisely, continues to exercise parental authority (*ouderlijke macht*) over the minor child, including in managing the child's inheritance. The term "substitute guardian" is more appropriate to refer to a guardian appointed after both parents have died or one parent has died or had their parental authority revoked. In the

⁷ Soedaryo Soimin, *Hukum Orang dan Keluarga* (Jakarta: Sinar Grafika, 1992).

⁸ Soediman Kartohadiprojo, *Pengantar Tata Hukum Indonesia* (Jakarta: Pembangunan, 2013).



context of the Child Protection Law, guardianship can be found in Article 1 point 5, which states that "A guardian is a person or entity who in fact exercises parental authority over a child", and it should also be noted that Article 33 paragraphs (2 to 4) broadly emphasize that if one wishes to become the guardian of a minor, their appointment as a guardian must be done through a court decision, the appointed guardian must share the same religion as the child, and the guardian must be responsible for the child and is obliged to manage the property of the minor for the best interests of the child. The purpose of guardianship is essentially to place minors under the care of a guardian so that the interests attached to the minor can be realized, to protect and preserve the minor and their property as mandated by law.

As is well known, the duties of a guardian are to manage the assets under their guardianship, take responsibility for any losses incurred due to mistreatment, provide appropriate maintenance and education for the child's assets, represent the child in all civil actions, keep records and inventories of the child's assets, and provide a final report on their duties as guardian. Guardianship under the Civil Code is divided into 3 types, namely:

1. Guardianship of the surviving spouse. This is regulated in Article 345 and Article 348, paragraph (2) of the Civil Code, which states that the surviving parent shall be the guardian of the child. Article 345 of the Civil Code states: "If one of the parents dies, guardianship of the minor children of the marriage shall, by law, be assumed by the surviving parent, unless the latter has been released or dismissed from parental authority." Then Article 348 paragraph (2) of the Civil Code states: "If the child is born alive, the usual rules regarding guardianship must be observed."
2. Guardianship appointed by the father or mother. This guardianship is usually established by means of a will or deed. This guardianship is provided for in Article 355 of the Civil Code. Article 355 paragraph (1) of the Civil Code states: "Each parent who exercises parental authority or guardianship over one or more children has the right to appoint a guardian for those children if, after his or her death by law or by a court decision in accordance with the last paragraph of Article 353, the guardianship does not have to be carried out by the other parent."
3. Guardianship based on a court decision. In guardianship based on a court decision, this is in accordance with Article 359 and Article 360 paragraph (1) of the Civil Code.⁹ Article 359 of the Civil Code states: "For all minors who are not under the authority of their parents and whose guardianship has not been legally arranged, the District Court must appoint a guardian after hearing or summoning their blood relatives and relatives by marriage in a lawful manner."

Then Article 360 paragraph (1) of the Civil Code states: "The appointment of a guardian shall be carried out by the District Court at the request of the blood relatives and in-laws of the minor, at the request of creditors or other interested parties, at the request of the Estate Office, at the request of the Attorney General's Office, or even because of the office, by the District Court in whose jurisdiction the minor resides."

⁹ Mustofa Hasan, *Pengantar Hukum Keluarga* (Bandung: Pustaka Setia, 2011).



Before someone is appointed as guardian of a minor, the prospective guardian must pay attention to the contents of Article 383 of the Civil Code, which states that "The guardian must provide for the maintenance and education of the minor according to his or her financial means and must represent the minor in all civil matters. The minor must respect his or her guardian." In general, Article 383 of the Civil Code stipulates that at the beginning of the guardianship, an inventory of all assets of the minor child is required, and the guardian is obliged to document all changes to these assets. Likewise, these assets must be audited annually to determine the value of the assets of the child under guardianship and to ensure that the assets are maintained. In addition, guardians are prohibited from selling, transferring, or pawning the assets of the ward, except in emergency (compelling) circumstances. This is related to Law Number 35 of 2014 concerning Child Protection, which stipulates that guardians are permitted to manage and develop the property of minors for the benefit of the child.

The researcher will share a brief story about a biological mother who is still alive (longest living) who petitioned the district court judge to appoint her as the guardian of her minor child due to two main interrelated reasons, namely to protect the interests of the minor child and to be able to perform legal actions related to the minor child's property, such as receiving inheritance. For example, in District Court Decision Number 1063/Pdt.p/2023/PN.Jkt.Sel, when a wife (Hesti Probawati), who is the longest-living spouse of a husband who died first and was blessed with two minor biological children (Adella Putri Hapsari and Chantika Larasati), to represent the interests of her two children to obtain the inheritance rights of her two children from her husband's parents (grandfather and grandmother) as substitute heirs of her husband who had died first, Hesti Probawati petitioned the South Jakarta District Court to grant her petition as the guardian of her two children. This study differs from the research written by Irselin Tasik Lino, who published an article in the legal journal *Alethea*, Volume 4, Number 2, February 2021,¹⁰ discusses how a mother requested the court to appoint her as guardian of her minor children over the joint property left by her husband, who had died earlier, not as a substitute heir.

METHOD

This research was conducted using normative empirical research, namely, research on the applicability of normative law in action.¹¹ Empirical normative legal research begins with written positive law provisions (laws) that are applied to specific legal events in society. The research specifications include the use of a qualitative approach with descriptive methods, and the data obtained is from primary and secondary legal materials relevant to exploring formal and material legal aspects. The primary legal materials used are: 1) The 1945 Constitution of the Republic of Indonesia; 2) Law Number 35 of 2014 concerning Child Protection; 3) The Civil Code; 4) District Court Decision Number 1063/Pdt.p/2023/PN.Jkt.Sel. The secondary legal materials used are books related to this research. The data was then

¹⁰ Irselin Tasik Lino, "Permohonan Perwalian Anak di Bawah Umur oleh Ibu Kandung dalam Pengelolaan Harta Warisan" (2021) 4:2 *J Ilmu Huk Aleth* 131-146, online: <<https://ejournal.uksw.edu/alethea/article/view/5633>>.

¹¹ Mukti Fajar & Yulianto Achmad, *Dualisme Penelitian Normatif dan Empiris* (Yogyakarta: Pustaka Belajar, 2015).



collected, organized, and described in sentences that are easy to understand so that the truth can be revealed in a systematic, methodological, and consistent manner. The approach used in this study combines two methods, namely the statute approach and the case approach. The nature of the research used in this study is descriptive. This descriptive nature is intended to obtain a good, clear picture and provide data as accurately as possible about the object being studied in accordance with the defined problem formulation. The processing, analysis, and construction of normative legal research data can be done by analyzing legal rules and constructing them by including articles related to the research into their respective categories.¹²

RESULT & DISCUSSION

Every legal action taken by a person requires competence and maturity. This is regulated in Article 330 paragraph (1) of the Civil Code, which broadly states that a person can be declared competent to perform legal actions if they are 21 years of age or older, or have been married before the age of 21. Competence (*handelings bekwaamheid*) is closely related to a person's ability to consider the legal consequences or implications of their actions. This is influenced by several factors, such as psychological and physiological factors. In addition to psychological and physiological factors, it can also be influenced by environmental factors. However, to provide legal certainty, a standard must be established to assess the limits of capacity. Maturity is always associated with mental maturity, personality, mindset, and social behavior. Maturity is a balanced combination of soul, body, and intellect. The measure of maturity is indeed very relative, depending on the perspective from which we view it. Maturity, according to the sociological view, is not necessarily the same as maturity according to the legal view, just as maturity according to the customary view is not necessarily the same as maturity according to the religious view.

Because a minor is someone who is considered incapable of performing legal acts, it is necessary to appoint a guardian who can represent the child in performing legal acts. Article 1, paragraph 1 of Law Number 35 of 2014, which replaces Law Number 23 of 2002 concerning Child Protection, states that: "a child is a person who is under 18 years of age, including a child who is still in the womb". In the case of a child who is still in the womb as stipulated in the child protection legislation, this can be linked to Article 2 of the Civil Code, which states that: "A child in a woman's womb is considered to have been born, if it is in the child's best interests." When considering the articles stipulated in child protection and the articles stipulated in the Civil Code above, it can be concluded that if a child is not yet an adult/is still a minor and if there are interests that require it for the child, then guardianship from a competent adult is required to protect the interests of the child who is not yet an adult/is still a minor.

¹² Windha Auliana Yusra, "Pengurusan Harta Warisan Anak di Bawah Umur yang Berada di Bawah Perwalian (Studi Penetapan Pengadilan Agama Medan Nomor 4 Pdt.P/2015/PA. Mdn)" (2016) 2 *Premise Law J* 1-21, online: <<https://media.neliti.com/media/publications/14158-ID-pengurusan-harta-warisan-anak-di-bawah-umur-yang-berada-di-bawah-perwalian-studi.pdf>>.



I. Background Judges Accept/Grant Mother's Request to Become Guardian of Minor Children from the Perspective of the Civil Code

A claim must have sufficient legal interest to be accepted by the court for examination. This does not mean that a claim with legal interest will definitely be granted by the court; it still depends on the evidence presented. If the claim is proven to be based on a right and there is sufficient evidence, it may be granted. The Supreme Court requires that the petition must be filed by a person who has a legal relationship, and the lawsuit must be filed by an interested party,¹³ this is in accordance with Supreme Court Decision No. 294 K/Sip/1971, dated July 7, 1971, which states that: "A lawsuit must be filed by a person/legal entity who has a legal relationship and interest in the matter in dispute, and not by another person."¹⁴

The judge's consideration in accepting/granting a request from a mother to become the guardian of her minor child is a non-contentious claim, where only one party has submitted the request based on the evidence in their possession, namely:

1. That the Petitioner (Hesti Probowati), with her Petition dated October 11, 2023, which was registered with the South Jakarta District Court Registry on October 19, 2023, recorded in Petition Register Number 1063/Pdt.P/2023/PN Jkt. Sel., has stated the following:
 - a. That the Petitioner is a citizen of the Republic of Indonesia based on Identity Card Number NIK: 3174965911690004 in the name of HESTI PROBOWATI;
 - b. That the Petitioner is the Head of the Family based on Family Card Number: 3174060405170001 in the name of HESTI PROBOWATI;
2. That the Petitioner has married a man named HADI KARYANTO, based on Marriage Certificate No. 240/18/III/2003 issued by the Religious Affairs Office of Cilandak Subdistrict, South Jakarta, and from that marriage has been blessed with two (2) legitimate children named:
 - a. ADELLA PUTRI HAPSARI, first child, female, born in South Tangerang, April 17, 2003, based on Birth Certificate Number: 3174-LT-06102023-0038 issued by the Population and Civil Registration Office of DKI Jakarta Province;
 - b. CHANTIKA LARASATI, female, born in Tangerang, April 12, 2009, based on Birth Certificate Number: 474.1/6255-DKCS/2009 issued by the Population and Civil Registration Office of Tangerang Regency.
3. That the husband of the Petitioner, HADI KARYANTO, passed away on April 10, 2017, based on Death Certificate Number: 3174-KM-17052021-0041, issued by the Population and Civil Registration Office of DKI Jakarta Province;
4. That based on the Certificate of Inheritance recorded in the Petogogan Village Register dated December 15, 2008, and recorded in the Kebayoran Baru Subdistrict Register dated December 16, 2008, the late HADI KARYANTO is the heir of the late TUGIMAN and the late KAMIRAH;
5. That the parents of the late HADI KARYANTO, namely TUGIMAN, passed away on September 30, 1998, and KAMIRAH passed away on February 16, 1999;

¹³ Sudikno Mertokusumo, *Hukum Acara Perdata Indonesia* (Yogyakarta: Cahaya Atma Pustaka, 2013).

¹⁴ Hulman Panjaitan, *Kumpulan Kaidah Hukum Putusan Mahkamah Agung Republik Indonesia Tahun 1953 – 2008 Berdasarkan Penggolongan* (Jakarta: Prenada Media Group, 2014).



6. That during their lifetime, the parents of the late HADI KARYANTO possessed assets in the form of:
 - a. Land Ownership Book No. 367, Measurement Letter dated 19-02-1990, No. 1701/90, Area: 1030 m² (One Thousand Thirty Square Meters), located in Posing Village, Wedi District, Klaten Regency, Central Java, in the name of the rights holder: TUGIMAN HARTOPAWIRO;
 - b. Certificate of Ownership No. 1059, Measurement Letter dated January 27, 2009, No. 00001/2009, Area: 69 m² (sixty-nine square meters), located in Petogogan Village, Jl. Kelapa Cipaku IV Rt.005/05. No. 3, Kebayoran Baru District, South Jakarta, in the name of the rights holders: SOEGIJONO, Hajjah WARTUTI, SRI RAHAYU, SAPTORINI, ENDANG MARDI REZEKI, HADI KARYANTO;
7. That the Petitioner and the Petitioner's two children, named ADELLA PUTRI HAPSARI and CHANTIKA LARASATI, are the heirs of the late HADI KARYANTO, based on the Heir Statement that was registered at the Cilandak Barat Sub-District Office on May 10, 2017;
8. That because the Petitioner's child, named CHANTIKA LARASATI, aged 14 (fourteen) years, is not legally competent or of legal age, a guardian is required;
9. That currently, the Petitioner, with the consent of his child, intends to file a petition for guardianship of a minor child for inheritance and distribution purposes;
10. That based on Article 345 of the Civil Code, which reads "if one parent dies, legal guardianship shall be exercised by the surviving parent over children who are minors and unmarried";
11. To act legally on behalf of oneself or as a guardian of a minor child, permission and a ruling from the South Jakarta District Court are required.
12. That the Petitioner is willing to bear all costs incurred in this petition.

Based on the evidence presented by the Petitioner (Hesti Probowati), the Judge has considered the legal arguments, namely:

1. Considering that on the appointed day of the hearing, the Petitioner appeared in person and the Petitioner's petition was read out in court, and after the reading of the petition;
2. The petitioner maintains his petition;
3. Considering that, to strengthen the arguments of the petition, the Petitioner's Attorney submitted written evidence in the form of photocopies with sufficient stamps and legalization, which have also been verified with the originals in court as mentioned above;
4. Considering that, to strengthen the arguments of the petition, the Petitioner's Attorney has also presented two (2) witnesses, namely Endang Mardi Rejeki and Indi Mulya Setiawan, who have been sworn in and have given testimony as contained in the Court Proceedings and form an integral part of this Decision;
5. Considering that, to shorten the description of the case, everything contained and included in the Court Proceedings Report is *mutatis mutandis* deemed to be included in this decision, and shall hereafter be taken into consideration;
6. Considering that the intent and purpose of the Petitioner's request are as stated above;



7. Considering that the Petitioner's request is essentially that the Petitioner submit a request to the District Court to act legally for and on behalf of himself and as the representative of a minor child to file a request for guardianship of a minor child for inheritance and distribution purposes.

Then the judge has ruled:

1. Granting the Petitioner's request;
2. Appointing the Petitioner, HESTI PROBOWATI, as guardian and legal representative of the minor child of HADI KARYANTO (deceased), named CHANTIKA LARASATI, aged 14 (fourteen) years old;
3. Declaring that the Petitioner can act legally for and on behalf of himself and as the representative of a minor child to file a petition for guardianship of a minor child for inheritance and distribution purposes.

With the evidence described above, before making a decision, the judge must first assess the evidence submitted by the parties. In assessing the evidence, in general, unless otherwise specified by law, the judge is free to assess the evidence because the burden of proof is stated in Article 283 Rbg in conjunction with Article 1865 of the Civil Code, which states:¹⁵ "Whoever claims to have a right or a circumstance to strengthen his right or deny the right of another person must prove that right or circumstance," then the applicant has the obligation to prove the arguments for his claim, because proof can be interpreted as an effort to provide certainty in a legal sense, providing sufficient grounds for the judge regarding the truth of an event submitted by the parties to the case formally, meaning limited to the evidence submitted at the trial. And from the results of the evidence presented by the applicant as described above, which was consistent with the evidence presented at the trial, starting from the marriage and death certificates and the consistency of the statements from the two witnesses, the judge found evidence that was used as the basis for accepting the applicant's request to be appointed as guardian of his two minor children.

A mother requested a court order to become the guardian of her minor child for two main interrelated reasons: to protect the child's interests and to perform legal acts related to the child's property, such as inheritance. The main legal basis of the Civil Code is that minors (under 18 years of age or who have never been married) are legally incapable of performing legal actions on their own. A person requests a court order for two reasons: because they are the surviving parent and are capable of caring for their minor children, and because a guardian is needed when a child becomes an heir (for example, to their grandfather) who automatically has assets or inheritance rights, and because they are not legally competent, these assets must be managed by a guardian. The mother's status as guardian needs to be clarified and confirmed by the court, especially if there is a conflict of interest or a need to sell inherited assets.

A court order is required to manage property, as stipulated in Article 384 of the Civil Code. Broadly speaking, this article provides compelling reasons for the mother to request a court order to restrict the guardian's actions regarding the property left behind for the child under guardianship, because as a guardian, she may not arbitrarily sell or pledge the assets belonging to her ward, or in other words,

¹⁵ Sri Wardah & Bambang Sutiyoso, *Hukum Acara Perdata Indonesia dan Perkembangannya di Indonesia* (Yogyakarta: Gama Media, 2007).



there are restrictions on the authority to transfer, mortgage, or encumber immovable property (such as land or houses, which are often the main components of an inheritance) belonging to the child under her guardianship.

II. Guardianship Rights Will Be Terminated When the Child Reaches Legal Age and Capacity

To answer the above question, the researcher conducted an interview with Mrs. Deka Diana, who is currently the Chief Judge of the Sarolangun District Court. However, at the time of the interview, she was not yet the Chief Judge of the Sarolangun District Court, but was still a judge in Kalianda, South Lampung. She said that the letter of appointment as guardian automatically expires when the child reaches adulthood, and there is no need to go to the District Court again to revoke the District Court's letter of appointment. However, if the minor child uses a guardian, a new letter of appointment from the court is required to revoke the guardianship held by the guardian of the child under guardianship. In some cases, guardians appointed for minors still request the judge to issue a letter of revocation if the child under guardianship is legally competent to perform legal actions. There are various reasons for revoking guardianship, such as the child becoming legally competent or the guardian appointed for the minor child behaving improperly.¹⁶

A guardian for a minor must pay attention to several articles listed in the Civil Code so that when the minor reaches adulthood and is capable of performing legal actions, the guardian can be held accountable for their obligations as a guardian. Specifically, Article 383 of the Civil Code regulates the obligation to inventory the property of minors under guardianship, whereby the essence of this article is that when a guardian begins their duties, they must make a list of the property of the child under their guardianship and record all changes that occur to that property, in a list that has been closed and dated by the District Court. Thus, this article stipulates an absolute obligation for a guardian to:

1. Creating an Asset List (Inventory): Recording in detail all assets (both inheritance and other assets) owned by the child at the time the guardian takes office;
2. Recording Changes: Any changes or mutations that occur in the child's property (e.g., sale, purchase, or receipt of a new inheritance) must be recorded in the list;
3. Legality: The list must be closed and dated by the District Court, indicating that the inventory process is officially recognized and supervised by the judicial institution.

A guardian has duties regulated by the Civil Code, which can be found in:

1. Article 331a of the Civil Code stipulates that the application of guardianship is more specifically described in the following paragraph, namely paragraph 1e, which states that: "if a guardian is appointed by a judge and the appointment takes place in his presence, at the time the appointment is made, and if it does not take place in his presence, at the time the appointment is notified to him."
2. Once guardianship has commenced, the guardian is expected to make an inventory of the assets and property owned by the minor and report the

¹⁶ Interview with Mrs. Deka Diana, S.H., M.H., Judge of Kalianda, South Lampung, Lampung, by Deka Diana.



guardianship to the Inheritance Office as stipulated in Article 368 of the Civil Code.

3. Article 385 paragraph (1) of the Civil Code states: "a guardian must manage the property of a minor as a good householder would, and is therefore responsible for any costs, losses, and interest incurred due to poor management."
4. Article 394 paragraph (1) of the Civil Code states that: "if a guardian wishes to sell immovable property, then a list of all the minor's assets must be attached to the request letter, specifying which items he wishes to sell. Paragraph (2) The District Court may grant the sale, either of the specified items or of other items, which, in the opinion of the Court, will not cause undue hardship to the minor."

Guardianship may end when the child under guardianship reaches adulthood, i.e., turns 21 years old and is legally competent to perform legal acts, or due to marriage, or due to resignation as a guardian, or due to a court decision, as explained in more detail in:

1. Relationship with the child's circumstances; in accordance with the provisions of Article 16 Paragraph (1) of Government Regulation Number 29 of 2019 concerning the Requirements and Procedures for Appointing a Guardian, guardianship may end when the child reaches the age of 18 (eighteen), the child dies, the guardian dies, and the guardian's legal entity is dissolved or declared bankrupt.¹⁷
2. The Civil Code contains several provisions that allow for the revocation of a guardian's authority, as stipulated in Article 368 and Article 380 paragraph (1) of the Civil Code.
3. Article 378 paragraph (1) of the Civil Code concerning the grounds for release from guardianship: "Anyone who wishes to be released from guardianship must request release from the judge who ordered the guardianship or, if there was no previous appointment by a judge, from the District Court of their place of residence."

The power of guardianship may be revoked based on a court ruling/decision. Guardianship may be revoked if the guardian neglects their duties as guardian, is incapable of performing legal acts, abuses their authority as guardian, commits acts of violence against the child in their care, and the parents are deemed capable of fulfilling their obligations.

CONCLUSION

An application to become the guardian of a minor child is a non-contentious claim, in which there is only one party, referred to as the applicant. A claim must have sufficient legal interest, which is the main requirement for it to be accepted by the court for examination. This does not mean that a claim with legal interest will definitely be granted by the court; it still depends on the evidence. The appointment of a guardian for a minor can be done in three ways, namely: (a) from the longest-living parent; (b) guardianship appointed by the father or mother by will or separate deed; (c) guardianship appointed by a judge. The guardianship takes effect from the

¹⁷ Ana Fauzia, Deva Gama Rizky Octavia & Fathul Hamdani, "The Conflict of the Norms in the Execution of Secured Objects Which are Enforced by Liability Rights When the Debtor is Bankrupt" (2022) 4:1 Progress Law Rev 1-9.



moment of appointment as a guardian by law or by court order. Given the considerable power vested in a guardian for a minor, every guardian must provide for the care and education of the minor in accordance with their assets and must represent them in all actions on behalf of the minor.

The Court's letter of appointment as guardian automatically expires, and there is no need to go to the District Court again to revoke the District Court's letter of appointment. If the guardian wishes to sell the property for the sake of the livelihood of the children under guardianship, the guardian must still request a court order to sell the property of the minor child. This serves as evidence for the guardian and the child under guardianship in the future.

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